

EXHIBIT M

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Attorney for Plaintiff,
GREAT BOWERY INC.
d/b/a TRUNK ARCHIVE

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

GREAT BOWERY INC. d/b/a TRUNK
ARCHIVE,

Plaintiff,

v.

CASCADE DIGITAL MEDIA LLC;
and DOES 1 through 10 inclusive,

Defendant.

Case No. 6:20-cv-00009

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff, GREAT BOWERY INC. d/b/a TRUNK ARCHIVE (“Trunk
Archive” or “Plaintiff”), for its complaint against Defendant, CASCADE DIGITAL
MEDIA LLC, (“Defendant”) alleges as follows:

JURISDICTION AND VENUE

1
2 1. This is a civil action seeking damages and injunctive relief for
3 copyright infringement under the Copyright Act of the United States, 17 U.S.C. §
4 101 *et seq.*

6 2. This Court has subject matter jurisdiction over Plaintiff's claims for
7 copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

9 3. This Court has personal jurisdiction over Defendant because
10 Defendant conducts business and/or resides within this judicial district,
11 Defendants' acts of infringement complained of herein occurred in this judicial
12 district, and Defendants caused injury to Plaintiff within this judicial district.

14 4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
15 1400(a) in that this is the judicial district in which a substantial part of the acts and
16 omissions giving rise to the claims occurred. Alternatively, venue is also proper
17 pursuant to 28 U.S.C. § 1400(b) because the Defendant resides and has a regular
18 and established place of business in this judicial district.

PARTIES

21
22 5. Plaintiff Great Bowery, Inc. d/b/a Trunk Archive is a Delaware
23 corporation duly organized by law, having a place of business at 190 Bowery New
24 York, NY 10012.

26 6. Defendant Cascade Digital Media LLC ("Defendant" or "Cascade
27 Media") owns and operates the website, <http://buzzfortoday.com/> (the "Website"),
28

1 which covers news relating to celebrities, political, finance, lifestyle, humor, and
2 inspirational stories.

3
4 7. Defendants maintain a principal place of business at 33465 McKenzie
5 View Drive, Eugene, OR 97408. Attached hereto as Exhibit A is a true and correct
6 copy of Cascade Media's Statement of Information filed with the Oregon Secretary
7 of State and their Terms of Use.

8
9 8. Trunk Archive is unaware of the true names and capacities of the
10 Defendants sued herein as DOES 1 through 10 inclusive, and for that reason, sued
11 such Defendants under fictitious names. Plaintiff is informed and believes and on
12 that basis alleges that such fictitiously named Defendants are responsible in some
13 manner for the occurrences herein alleged, and that Plaintiff's damages as herein
14 alleged were proximately caused by the conduct of said Defendants. Plaintiff will
15 seek to amend the complaint when the names and capacities of such fictitiously
16 named Defendants are ascertained. As alleged herein, "Defendant" shall mean all
17 named Defendants and all fictitiously named Defendants.

18
19
20 9. For the purposes of this Complaint for Damages, unless otherwise
21 indicated, "Defendant" includes all agents, employees, officers, members,
22 directors, heirs, successors, assigns, principals, trustees, sureties, subrogates,
23 representatives and insurers of Defendant(s) named in this caption.
24

25 FACTUAL ALLEGATIONS

26 *Trunk and the Photographs Forming the Subject Matter of this Complaint*

27
28

1 10. Trunk Archive is a full service photography licensing agency
2 representing some of the most prominent photographers and iconic images in the
3 world.
4

5 11. Trunk Archive's catalogue features imagery from hundreds of
6 prominent artists and designers that are available for license.
7

8 12. One of the artists whom Trunk Archive represents is New York based
9 photographer Annie Leibovitz ("Leibovitz").

10 13. Leibovitz is primarily known for her celebrity portraiture, and her
11 work has been used on numerous album covers and magazines.
12

13 14. Perhaps her most iconic photograph is that of musician John Lenon
14 and his wife Yoko Ono taken for *Rolling Stone* magazine mere hours before Lenon
15 was shot and killed in front of his apartment on December 8, 1980.
16

17 15. In 2014, Leibovitz took a series of photographs of Caitlyn Jenner
18 published online by *Vanity Fair* on June 25, 2015, with a "VF" watermark at the
19 bottom right corner and the caption "PHOTOGRAPHED BY ANNIE
20 LEIBOVITZ" for each photograph. See

21 [https://www.vanityfair.com/hollywood/2015/06/caitlyn-jenner-bruce-cover-annie-](https://www.vanityfair.com/hollywood/2015/06/caitlyn-jenner-bruce-cover-annie-leibovitz)
22 [leibovitz.](https://www.vanityfair.com/hollywood/2015/06/caitlyn-jenner-bruce-cover-annie-leibovitz)
23

24 16. Attached hereto as Exhibit B are true and correct copies of the
25 original images at issue of Caitlyn Jenner.
26

27 17. Leibovitz registered the Images with United States Copyright Office
28

1 under registration number VA 2-977-805 with an effective registration date of
2 August 7, 2015.

3 18. Leibovitz subsequently granted Trunk Archive the exclusive right to
4 license the Image.
5

6 ***Defendant's Infringement of the Images***

7 19. On or about April 26, 2019, Trunk Archive discovered that Defendant
8 had used the Images without authorization on its Website in a post about celebrity
9 news (the "Infringing Post"). True and correct copies of the Infringing Post
10 featuring Leibovitz's Images are attached hereto as Exhibit C.
11

12 20. On information and belief, Defendants made unauthorized copies of
13 the Images, and uploaded them to the server for Defendant's Website.
14

15 21. Trunk Archive never authorized Defendants to use the Images in any
16 manner.
17

18 22. On information and belief, Defendant knew that it did not have
19 permission to use the Images on the Website and willfully infringed Leibovitz's
20 images.
21

22 **FIRST CAUSE OF ACTION**
23 **COPYRIGHT INFRINGEMENT**
24 **17 U.S.C. § 101 *et seq.***

25 23. Plaintiff incorporates by reference all of the above paragraphs of this
26 Complaint as though fully stated herein.

27 24. Plaintiff did not consent to, authorize, permit, or allow in any manner
28

1 the said use of Plaintiff's unique and original Images.

2 25. Plaintiff is informed and believes and thereon alleges that the
3 Defendant willfully infringed upon the copyrighted Images in violation of Title 17
4 of the U.S. Code, in that it used, published, communicated, posted, publicized, and
5 otherwise held out to the public for commercial benefit, the original and unique
6 Images of the Plaintiff without Plaintiff's consent or authority, by using it in the
7 Infringing Post on Defendant's Website.
8
9

10 26. As a result of Defendants' violations of Title 17 of the U.S. Code,
11 Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or
12 statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c)
13 per work infringed.
14

15 27. As a result of the Defendants' violations of Title 17 of the U.S. Code,
16 the court in its discretion may allow the recovery of full costs as well as reasonable
17 attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendants.
18

19 28. Plaintiff is also entitled to injunctive relief to prevent or restrain
20 infringement of his copyrights pursuant to 17 U.S.C. § 502.
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22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

- 24
- 25 • For actual damages or statutory damages against Defendants in an amount
26 up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c);
 - 27 • For general and special damages against Defendants, according to proof,
28

1 together with interest thereon at the maximum legal rate;

- 2 • For costs of litigation and reasonable attorney's fees against Defendants
3 pursuant to 17 U.S.C. § 505;
4
5 • For an injunction preventing Defendants from further infringement of all
6 copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; and
7
8 For any other relief the Court deems just and proper.

9
10 Dated: January 2, 2020

Respectfully submitted,

11 /s/ Mathew K. Higbee
12 Mathew K. Higbee, Esq.
13 Cal. Bar No. 241380
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DEMAND FOR JURY TRIAL

Plaintiff, Great Bowery, Inc. d/b/a Trunk Archive, hereby demands a trial by jury in the above captioned matter.

Dated: January 2, 2020

Respectfully submitted,

/s/ Mathew K. Higbee
Mathew K. Higbee, Esq.
Cal. Bar No. 241380
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